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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
  
the Petition  
of the Inmate Calling  
Services Providers Task Force  
for Declaratory Ruling

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RM-8181

TO: The Commission

REPLY COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company ("SWBT") respectfully files this Reply to the Comments of Advanced Technologies Cellular Telecommunications, Inc. ("ATCT") and Capital Network System, Inc. ("CNS"), both of whom support the Petition for Declaratory Ruling ("Petition") filed by the Inmate Calling Services Providers Task Force ("ICSPTF"). As demonstrated below, neither commentor's arguments provide any justification for granting the relief ICSPTF seeks. Despite their claims, inmate-only pay telephones meet the Commission's pay telephone exclusion test and such treatment has not adversely affected independent pay telephone providers, competitively or otherwise. Thus, the Commission should reject ATCT's and CNS' contrary arguments, deny ICSPTF's Petition in its entirety, and continue the regulated treatment of pay telephones and services provided at correctional facilities.

I. INMATES ARE MEMBERS OF THE PUBLIC OR SOME SEGMENT THEREOF BY

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whether the primary user is "the general public or some segment thereof."<sup>1</sup> SWBT demonstrated that inmates remain members of the general public despite their confinement, or are a segment thereof because of it, consistent with Commission precedent.<sup>2</sup> Finally, SWBT explained that ICSPTF's proposed "controlled conditions" litmus test was not supported either by precedent or by logic and should be rejected.<sup>3</sup>

Neither ATCT nor CNS addresses these critical points. If anything, their failure to discuss ICSPTF's proposed test reflects a lack of legal and industry support for such a test. Furthermore, their discussion of the Commission's TOCSIA ("Telephone Operator Consumer Services Improvement Act") Order<sup>4</sup> is simply beside the point.

ATCT and CNS argue that in its TOCSIA Order, the Commission promulgated regulations applicable to pay telephone locations other than correctional facilities, e.g., hotels, motels and universities, and that this means the Commission found that inmate-only pay telephones were not "public" pay telephones.<sup>5</sup> Two

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<sup>1</sup> SWBT Comments, at pp. 1-2, 6-9; see also, In the Matter of Petition for Declaratory Ruling of Tonka Tools, Inc. and Southern Merchandise Corp. regarding American Telephone and Telegraph Company Provision of Coinless Pay Telephones, Memorandum Opinion and Order, 1985 FCC Lexis 3272, released May 22, 1985 ("Tonka Tools").

<sup>2</sup> SWBT Comments at 6-9; see also, Tonka Tools, at para. 12.

<sup>3</sup> SWBT Comments, at pp. 8-9.

<sup>4</sup> In the Matter of Policies and Rules Concerning Operator Service Providers, Report and Order, 6 FCC Rcd 2744 (1991), ("TOCSIA Order") recon. denied in part and clarified in part, 7 FCC Rcd 3882 (1992).

<sup>5</sup> ATCT Comments, at p. 4; CNS Comments, at pp. 4-5.

critical facts on which the TOCSIA Order turned, both omitted by these commentators, defeat any such inference.

First, as the Commission expressly observed, TOCSIA's legislative history specifically states that Congress intended to include hotel, motel, university and other like facilities with pay telephones as "aggregators" for TOCSIA purposes.<sup>6</sup> The legislative history was silent on whether Congress intended that TOCSIA should apply to inmate-only pay telephones, and this omission required that the Commission look elsewhere to determine whether such pay telephones should have 10XXX dialing capability. Second, when it did look elsewhere, the Commission declined to make 10XXX available to inmates because of an "exceptional set of circumstances that warranted their exclusion."<sup>7</sup> These exceptional circumstances related to the potential for fraud, a problem whose significance was not disputed by any of the over 400 commentators in that proceeding.<sup>8</sup>

The Commission's TOCSIA Order never concluded that inmate-only pay telephones are not used by the public or some segment thereof. Thus, the Commission never excluded inmate-only pay telephones from TOCSIA based on any such reasoning. Commentors' contrary arguments stem from their mischaracterization of the Commission's TOCSIA Order and merely highlight their mischaracterization of the pay telephone exclusion generally.

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<sup>6</sup> TOCSIA Order, at para. 16, ns. 31, 32.

<sup>7</sup> Id. at para. 15.

<sup>8</sup> Id. at paras. 5, 9.

II. NO EVIDENCE EXISTS THAT REGULATED TREATMENT OF INMATE-ONLY PAY TELEPHONES HAS CAUSED ANY COMMENTOR COMPETITIVE HARM.

ATCT and CNS claim that they face a "serious competitive disadvantage" because of the FCC's regulated treatment of inmate-only pay telephone equipment and services.<sup>9</sup> Yet their claim in this regard is no better than the same claim made by ICSPTF -- each is unsubstantiated, conclusory and lacking any empirical or evidentiary support.<sup>10</sup> Nor do these commentors describe any causal connection between their so-called competitive disadvantage and the deregulation ICSPTF seeks, another deficiency shared by the Petition.<sup>11</sup>

To the contrary, private pay telephone providers have more competitive flexibility in the bid process than do the BOCs, as evidenced by their often more attractive commission packages. The MFJ restricts a BOC's ability to share revenues with an interexchange carrier,<sup>12</sup> or even to select the interexchange carrier.<sup>13</sup> Private pay telephone providers, not saddled with such prohibitions, can command reduced rates, commissions payments or other concessions from interexchange carriers. As a result, such providers are typically able to offer correctional facilities

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<sup>9</sup> ATCT Comments, at p. 1; CNS Comments at pp. 1-2.

<sup>10</sup> SWBT Comments, at p. 14.

<sup>11</sup> Id.

<sup>12</sup> See, e.g., United States v. Western Electric Co., Inc., 578 F. Supp. 653, 654-55 (D.D.C. 1983).

<sup>13</sup> United States v. Western Electric Co., 578 F. Supp. 676, 677 (D.D.C. 1983); United States v. Western Electric Co., 627 F. Supp. 1090, 1102 (D.D.C. 1983), aff'd. in part, rev'd. in part, 797 F.2d 1082 (D.C. Cir. 1986); United States v. Western Electric Co., 698 F. Supp. 348, 352, n. 17 (D.D.C. 1988).

significantly higher commissions and the advantage of not having to negotiate separately with the interexchange carriers. Thus, independent pay telephone providers' ability to "partner" with interexchange carriers gives such providers a clear competitive advantage relative to the BOCs, not vice versa.

Finally, SWBT's ratepayers do not subsidize its providing monitoring and recording equipment to those correctional officials who request such arrangements. As SWBT explained in its Comments, SWBT regards such equipment as CPE and the expenses associated with installing and maintaining it are accounted for as such, in full compliance with the Commission's rules.<sup>14</sup> Neither the revenue earned nor the expenses incurred for such items are involved in the ratemaking process.

Accordingly, there is no reason why the Commission should depart in this proceeding from its previously-stated view that continued regulated treatment of pay telephones does not present "any serious threat to the viability of these competitors."<sup>15</sup>

### III. CONCLUSION

Neither ATCT nor CNS presents any argument which would justify deregulating inmate-only pay telephones. Neither has refuted that these telephones serve the public or some segment thereof or has put forth even a scintilla of evidence suggesting

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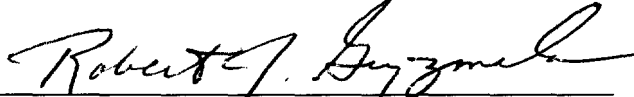
<sup>14</sup> SWBT Comments, at pp. 11, n. 25, & 19.

<sup>15</sup> Tonka Tools, at para. 12, n. 32. Further, as SWBT earlier noted, in a recent sample of inmate-only pay telephone bids that SWBT recently submitted in one of the five states it services, SWBT lost more of them than it won. SWBT Comments, at p. 15.

that such treatment has disadvantaged them or other independent pay telephone providers. Thus, their arguments should be rejected and ICSPTF's Petition should be denied.

Respectfully submitted,

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March 26, 1993

**CERTIFICATE OF SERVICE**

I, Katie Turner, hereby certify that the foregoing  
"Reply Comments of Southwestern Bell Telephone Company" in  
Docket No. RM-8181, has been served this 26th day of March,  
1993 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie Turner", is written over a horizontal line.

Katie Turner

March 26, 1993

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